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FISCAL IMPACT STATEMENT

LS 7818 **NOTE PREPARED:** Jan 28, 2003
BILL NUMBER: HB 1003 **BILL AMENDED:** Jan 28, 2003

SUBJECT: Allocation of Reed Act Funds.

FIRST AUTHOR: Rep. Liggett **BILL STATUS:** CR Adopted - 1st House
FIRST SPONSOR:

FUNDS AFFECTED: **GENERAL**
X **DEDICATED**
FEDERAL

IMPACT: State

Summary of Legislation: This bill authorizes the use of federal money by the Department of Workforce Development for various purposes.

The bill establishes requirements for the procedure used by a common construction wage committee to determine the scale of wages for the construction of a public work. The bill provides that a person may request that the Department of Labor review a determination if the person has substantial reason to believe that the determination does not comply with the common construction wage law.

It also authorizes the Department of Labor to enforce the Independent Contractor Exemption from Worker's Compensation and Occupational Disease Coverage and allocates amounts in the Worker's Compensation Supplemental Administrative Fund for enforcement. The bill provides that a person who fails to: (1) obtain a copy of an Independent Contractor's Stamped Certificate of Exemption before the contractor performs work; or (2) keep a copy of the certificate on file as long as the contractor is performing work; is subject to a civil penalty not to exceed $1,000 per violation.

It increases Worker's Compensation and Occupational Disease Benefits. This bill modifies the average weekly wage for an employee who sustains a compensable injury or occupational disease after a prior period of disability. It revises the calculation of Second Injury Fund assessments. The bill establishes an Occupational Disease Second Injury Fund. It authorizes a 10% prejudgment interest rate for disputed Worker's Compensation and Occupational Disease claims. This bill establishes Disabled from Trade compensation. It requires an employer to give an employee 30 days notice before terminating temporary total disability benefits. The bill provides for a $250 fine for failure to pay assessments into the Second Injury Fund or Occupational Disease Second Injury Fund. It also requires the Worker's Compensation Board to refer an insurance carrier that does not pay the assessments to the Department of Insurance for administrative action for committing an unfair or deceptive act and practice. The bill provides for a uniform two-year statute of limitations for Worker's Compensation and Occupational Disease claims.

The bill authorizes the Worker's Compensation Board to appoint magistrates to determine issues arising under worker's compensation, with certain exceptions. The bill requires a magistrate to report the magistrate's findings in an evidentiary hearing to the Board and requires a Board member to enter the final order or award. It establishes a process for transferring an employee's medical treatment to another physician.

This bill requires the written consent of an employee and the involved medical personnel for an employer representative to be present during an employee's medical treatment or examination.

It reduces by 20% rather than refusing the payment of benefits when an employer proves that an employee is intoxicated, commits an offense, knowingly and willfully fails to use a safety appliance, knowingly and willfully fails to obey a reasonable printed rule of the employer, or knowingly and willfully fails to perform any statutory duty. The bill increases an employee's compensation by 30% when an employer fails to comply with certain safety practices.

The bill establishes the grounds to disqualify a temporary employee from receiving unemployment benefits. The bill makes it a Class A misdemeanor for, and provides a private right of action against, a temporary employment agency that violates or fails to provide certain protections to temporary employees in the construction trades. The bill also eliminates the waiting period for unemployment benefits. It establishes an alternative base period. The bill increases maximum wage credits and the taxable wage base. This bill allows an employee to receive a retroactive unemployment benefit when an employer shuts down operations after a labor dispute. It reduces to 10 days an employer's response time to unemployment benefit claims. The bill establishes work sharing and job training benefits.

This bill requires the Department of Workforce Development (DWD) to deposit the first $450,000 in Skills 2016 Training Assessments in the Special Employment and Training Services Fund. It eliminates the transfer of Skills 2016 Training Fund assessments and deposits to the Unemployment Insurance Benefit Fund. It increases to 95% the amount in the Skills 2016 Training Fund allocated to Ivy Tech and reduces to 12.5% the maximum amount from the allocation that may be used by Ivy Tech for administrative costs. The bill repeals the sunset provision for the Skills 2016 Training Program.

Effective Date: Upon passage.

Explanation of State Expenditures: *Common Construction Wage Committee:* The bill specifies that the Common Construction Wage Committee shall consider data presented by the Department of Workforce Development, collective bargaining agreements, and other data submitted by interested parties. The information is limited to wages and benefits currently being paid by construction industry employers. Testimony presented to the committee must be under oath or affirmation. A person may appeal the committee's decision to the state Department of Labor. The influence of the change is expected to vary by project. The precise impact of the change made by this bill cannot be determined.

Independent Contractor: The bill authorizes the Department of Labor to enforce the Independent Contractor Exemption from Worker's Compensation and Occupational Disease Coverage and allocates amounts in the Worker's Compensation Supplemental Administrative Fund for enforcement. The Department is to hire staff to verify compliance and investigate matters involving the independent contractor. The increase in cost is unknown. The filing fee for the Independent Contractor Certificate is $15. The bill specifies that $10 of the fee is to be used by the Department of Labor for enforcement.

Worker's Compensation Board Magistrates: The bill allows the Worker's Compensation Board to appoint magistrates to determine issues arising under worker's compensation. The magistrates would help the Board reduce the backlog of appeals the Board currently has on file. It is estimated that the Board would need 3 or 4 magistrates classified as Workers' Compensation Specialist 2. The estimated cost of the magistrates is between $138,411 and $183,505 per year.

The funds and resources required above could be supplied through a variety of sources, including the following: (1) Existing staff and resources not currently being used to capacity; (2) Existing staff and resources currently being used in another program; (3) Authorized, but vacant, staff positions, including those positions that would need to be reclassified; (4) Funds that, otherwise, would be reverted; or (5) New appropriations. The Worker's Compensation Board had 4 vacant positions on 11/18/2002 valued at $69,056 and reverted $142,536 for FY 2002. Ultimately, the source of funds and resources required to satisfy the requirements of this bill will depend upon legislative and administrative actions.

Compensation Adjustments: The bill reduces the benefit by 20% if the injury or death was due to the employee's:

a. Intoxication.
b. Commission of an offense.
c. Knowing and willful failure to use a safety appliance furnished by the employer.
d. Knowing and willful failure to obey a reasonable written or printed rule of the employer .
e. Knowing and willful failure to perform any statutory duty.

Currently, the employee would probably receive no benefit for the above offenses.

The bill increases the benefit by 30% for an injury or death caused in any degree by the employer's intentional failure to comply with a statute or administrative regulation regarding safety methods or installation or maintenance of safety appliances.

The number of employees that will be excluded from benefits or receive increased benefits under the bill is unknown.

Medical Treatment: The bill specifies that once the employee's treatment begins, neither the employer or employer's insurer can transfer or redirect the medical treatment unless the employee, the attending physician, or the Workers' Compensation Board requests the transfer. Also, neither the employer or their insurance carrier may be present during medical treatment unless the employee and treating medical personnel have given written permission. The impact of the change is unknown.

Permanent Partial Impairment: This bill increases the rates for calculating permanent partial impairment compensation under worker's compensation and occupational disease law. The rates traditionally vary depending on the degree of impairment resulting from the injury. A different set of rates each year for two years are established by this bill (see Table A below). The rates are effective for injuries and disablement occurring after the date shown in each column.

Table A: Permanent Partial Impairment Rates.			
Permanent Partial Impairment Degrees of Injury	**Current**	**Effective July 1, 2003**	**Effective July 1, 2004**
1-10 Degrees	$1,300	$2,056	$2,406
11-35 Degrees	$1,500	$2,706	$3,081
36-50 Degrees	$2,400	$3,306	$3,781
Over 50 Degrees	$3,000	$3,906	$4,531

Average Weekly Wage: This bill increases the maximum average weekly wage used in the determination of compensation for temporary total disability, temporary partial disability, and total permanent disability (see Table B). Medical benefits are determined by the degree of impairment and are not based on the wage. The bill also increases the maximum compensation (exclusive of medical benefits) that may be paid for an injury under worker's compensation and occupational disease law. New maximum compensation limits are added for injuries occurring after July 1, 2003, and July 1, 2004 (see Table B below).

Table B: Average Weekly Wage Additions (For Worker's Compensation and Occupational Disease).			
	FY 2003 (Current)	**FY 2004 (Proposed)**	**FY 2005 (Proposed)**
Minimum Weekly Wages	$75	$206	$206
Maximum Weekly Wages	$822	$948	$1,014

Maximum Compensation: The bill increases the maximum compensation, excluding medical benefits, that may be paid for an injury from $294,000 to a total of 125 weeks of temporary total disability compensation plus 100 degrees of permanent partial impairment. The maximum is estimated to be $451,450 for FY 2004 and $511,100 for FY 2005 based on the new benefit levels.

It is difficult to determine the potential cost of these changes. PL 31-2000 included similar types of adjustments, although the magnitude of the adjustments was different. An actuarial analysis of these changes is being performed by the National Council on Compensation Insurance (NCCI). [Note: The results of the actuarial analysis are not currently available. The note will be updated when NCCI finishes their analysis.] According to the Indiana Compensation Rating Bureau, premiums increased by 1.5% for 2001 and decreased by 7.4% for 2002. Premiums for workers' compensation for 2001 were about $677 M.

The state is impacted as an employer. The state spent $3.4 M in FY 1998, $3.7 M in FY 1999, $3.9 M in FY 2000, $4.5 M in FY 2001, and $5.3 M in FY 2002 on worker's compensation payments. The additional state cost would probably be similar to the 2001 cost of about $79,500, or an increase of 1.5%.

Second Injury Fund Assessment: Current law allows the Worker's Compensation Board to assess a fee of 2.5% of the total amount of worker's compensation paid to injured employees or their beneficiaries if the balance in the fund is less than $1,500,000 on October 1. The Second Injury Fund had a balance of $1,505,990 on June 30, 2001, but had an outstanding loan of $206,000. The benefits paid from the fund for FY 2002 were $534,877, and the assessments totaled $3,033,618. The assessment is limited to no more than

0.25% more than the amount recommended by the actuary. The bill increases the maximum assessment to 3.5% if the fund balance is less than $2.5 M. A 3.5% assessment would have raised about $4,247,065 for FY 2002. This bill modifies the average weekly wage for an employee who sustains a compensable injury or occupational disease after a prior period of disability. The Worker's Compensation Board does not have data on the number of people who suffer a later period of disability due to a prior injury that was compensated. The bill would increase the benefits by whatever salary adjustment the person had received since returning to work. The benefits would be subject to the maximum average weekly wage limitations.

The impact on the state is as an employer. The state is self-insured, so the impact would equal any increase in benefits at the time of the second disability.

Disabled from Trade: The bill establishes the "disabled from trade" compensation benefits. Under this proposal, if an employee sustains an injury or occupational disease resulting in temporary total disability or permanent partial impairment but is able to return to work at a lower-paying position, the employee may be compensated for the difference between his/her former and current wages. Disabled from trade compensation would be available in addition to any other compensation awarded for such injuries. The actual amount compensated would be based on the employee's average weekly earnings and would be capped at $762 per week. Eligibility for disabled from trade compensation is limited to 52 consecutive weeks or 78 aggregate weeks.

The exact impact of this provision is difficult to determine. The Worker's Compensation Board does not collect information concerning the number of workers that cannot return to work at their original position. However, as the majority of workplace injuries would not prevent an employee from returning to his/her previous position, it is unlikely that the additional costs resulting from this proposal would represent a significant increase in worker's compensation payments. This provision could also reduce worker's compensation payments if employees return to work sooner and the "disabled from trade" compensation benefits are less than temporary total disability benefits.

Interest: The bill requires that if a determination is not made within 30 days that the employer must include interest with the first installment of compensation. The interest rate is 8% unless there is an agreement on a lower rate. The impact would depend on the amount of the claim and the processing time of a claim. *Example:* If the claim was $600 per week and the claim took six months to be determined by the Board or a court, then the interest for the claim would be about $292.

Prejudgement Interest: The bill provides prejudgement interest based on a rate of 10% per year accruing from the date of filing of the application of adjustment of claim. The potential impact is unknown. The impact would depend on the amount of the claim and the processing time of a claim that goes to the Worker's Compensation Board or the courts. *Example:* If the claim was $600 per week and the claim took six months to be determined by the Board or a court, then the interest for the claim would be about $363.

Occupational Disease Second Injury Fund: The bill establishes the Occupational Disease Second Injury Fund (effective January 1, 2003) for supplemental compensation to employees disabled from occupational diseases whose benefits have otherwise been exhausted. The assessment is 3.5% of the total amount of occupational disease compensation paid if the balance in the fund is less than $2.5 M. The funding mechanism is similar to the one used by the Second Injury Fund. This fund would be administered by the Worker's Compensation Board. The Board could incur additional administrative expenses associated with this proposal, however, these expenses could be absorbed given the Board's current budget and resources.

Alternative Wage Base- The base period is currently the first four calendar year quarters out of the last five complete quarters. A person has to earn at least $1,650 in the last two quarters of the base period and $2,750 in base period wages. The bill would change the definition for employees without sufficient wages in the base period to the last four completed calendar year quarters. From October 2001 to September 2002, 281,282 people applied for unemployment and 28,860 were denied for insufficient wage credits. The impact of an additional 28,860 claims would be an increase in expenditures from the fund of between $22.2 M and $52.5 M. During FY 2002 the fund paid $459 M in benefits and had an ending balance of $1,472.9 M.

The state paid about $2.7 M in unemployment benefits for FY 2002. Assuming an 11.43% increase in claims, the impact to the state as an employer would be about $314,000.

Skills 2016 Program - Current law allocates an amount not to exceed $450,000 for training and counseling assistance for the unemployed from the Skills 2016 Training assessment. The bill would specify that the first $450,000 of the assessment, unless the Unemployment Insurance Board approves a lesser amount, would be used for training and counseling assistance for the unemployed. The provision would have no state fiscal impact. The bill increases to 95% the amount in the Skills 2016 Training Fund allocated to Ivy Tech and reduces to 12.5% the maximum amount from the allocation that may be used by Ivy Tech for administrative costs. The provision should have no state fiscal impact. Current law provides that if the ratio of the Unemployment Fund balance to the gross payroll of all employers is less than 0.015, then the Skills 2016 Training assessment is transferred to the Unemployment Fund of the Skills 2016 Training Fund. The bill deletes the transfer provision. The change would not have any impact as long as the ratio stays about 0.015.

Increase in Maximum Unemployment Benefits: The current earnings base used for the computation of weekly benefits is $7,900 per quarter for a maximum weekly benefit of $336 for FY 2003. The bill increases the earnings base to $8,433 per quarter and increases the maximum weekly benefit to $420, an increase of $84 (25%) for FY 2004. The bill also changes the method of calculating benefits for FY 2005 and later. The new calculation is 4 1/6% of the individual's average quarterly wages during the two quarters of the individual's base year in which the individual's total wages were highest. The new maximum benefit is 50% and the minimum benefit is 15% of the average weekly wage for the period beginning January 1 and ending June 30 of the current year. If the average weekly wage in 2004 is $1,000, then the maximum benefit would be $500 and the minimum benefit would be $150.

This provision will impact the amount of benefits available to an individual from the Unemployment Benefit Trust Fund. Based on the amount paid in unemployment benefits in FY 2002, this bill would increase expenditures from the Unemployment Benefit Trust Fund by approximately $176.4 M in FY 2004 and $342.9 M for FY 2005.

Note: The Unemployment Benefit Trust Fund is funded by quarterly contributions made by employers. The amount of each employer's contribution is based on the employer's individual unemployment account history and the past year's statewide unemployment rate. Other factors, including benefits paid to former employees, voluntary payments made, and the partial selling and purchasing of other businesses by the employer also impact each employer's rate. The potential impact of the provisions of this bill will change as the state's economy changes. For example, if the state's unemployment rate increases, the amount of unemployment benefits paid from the Fund will increase, and an employer's contribution rate to the Fund will change.

The state of Indiana is self-insured for unemployment benefits and pays claims as they occur. Each agency is responsible for paying its unemployment claims. For FY 2002 the state paid $2.7 M in benefits: $1,463,696 from the General Fund and $1,287,736 from dedicated funds. The maximum impact to state agencies is about

$688,000 for FY 2004 ($366,000 from the General Fund and $322,000 from dedicated funds) and $1,343,000 for FY 2005 ($714,000 from the General Fund and $629,000 from dedicated funds).

Elimination of One-Week Waiting Period: The elimination of the one-week waiting period for unemployment compensation will have an impact on the total amount of Unemployment Insurance Benefit Trust Fund benefits paid. For the period of October 2001 to September 2002, there were 124,000 claims that did not exhaust their benefits, and the average weekly benefits were $247. Assuming the individuals would have received one additional week of benefits, the impact is estimated to be $30.6 M [($247*1 week)*124,000 claims]**.**

Work Sharing Unemployment Compensation Benefits: The bill allows for the development of a job sharing plan by a business with the approval of the Department of Workforce Development. The plan would list the individuals involved in the job sharing, and the plan would be limited to a duration of not more than six months. During that time an individual could receive partial unemployment benefits. The benefit would equal the benefit the individual would be eligible for times the percentage reduction in working hours due to the job sharing. The fiscal impact is unknown. The bill would give businesses an option during economic slowdowns.

Unemployment Benefits for Strikers if Business Shuts Down: The bill could increase the expenditures from the Unemployment Insurance Benefit Fund by an unknown amount. The bill could reduce the fund balance, and if the balance is reduced sufficiently, then employer rates could increase. However, the individual employer's rate would not increase since the employer has terminated operations.

Expanded Unemployment Benefits While in State Training: The bill allows an individual to continue to receive benefits for up to 52 times the weekly benefit amount, reduced by the total amount of regular and extended benefits paid. The individual has to apply to the Department of Workforce Development and must be determined to need job-related training to find suitable employment. The fiscal impact would depend on the number of individuals that apply and the length of the training. If 100 individuals applied and received an additional 26 weeks of benefits, the impact to the fund would be about $613,000.

The bill appropriates $160 M to DWD from funds made available to Indiana under Section 903 of the Social Security Act, as amended by Section 209 of the Temporary Extended Unemployment Compensation Act of 2002, which is Title II of the federal Jobs Creation and Worker Assistance Act of 2002, P.L. 107-147. The $160 M is used to fund:

1. $50 M is to be used for the modernization of the Unemployment Insurance system,
2. $50 M is to be used for the JOBS proposal to meet the workforce needs of Hoosier employers in high wage, high skill, and high demand occupations, and
3. $60 M is to be used to provide Hoosier workers with 13 additional weeks of state-funded UI benefits.

Background: The balance in the Unemployment Insurance Benefit Fund as of June 30, 2002, was about $1.28 B, and benefits paid were about $702.6 M.

<u>Explanation of State Revenues:</u> The bill provides for a $1,000 civil penalty plus investigation costs per violation if a person fails to obtain a copy of an Independent Contractor's Stamped Certificate of Exemption before the contractor performs work or fails to keep a copy of the certificate on file as long as the contractor is performing work. The revenue generated would depend on the number of violations per year.

The bill also provides for a $250 fine for failure to pay assessments into the Second Injury Fund or

Occupational Disease Second Injury Fund. The impact would depend on the number of fines assessed.

The bill increases the salary cap for unemployment insurance. Currently, employers pay a fixed percentage of each employee's salary up to a maximum salary of $7,000 into the Unemployment Insurance Benefit Fund. The bill increases the maximum to $9,000, an increase of 28.6%. For FY 2002 the revenue into the fund was $245.2 M. Assuming that most salaries are above $9,000, then the increase in revenue is about $70 M annually.

Explanation of Local Expenditures: Local governments and school corporations could incur an indeterminable increase in expenses as a result of these proposals (see *Explanation of State Expenditures*). Like the state, most of these units are self-insured and would directly bear any additional costs related to "disabled from trade" compensation. For any entities purchasing private worker's compensation insurance, the cost of insurance premiums would likely increase as a result of this proposal.

Explanation of Local Revenues:

State Agencies Affected: Worker's Compensation Board; Department of Workforce Development; Department of Labor; All State Agencies.

Local Agencies Affected: All Local Units of Government.

Information Sources: Indiana Compensation Ratings Bureau website; Department of Workforce Development; *Indiana Handbook of Taxes, Revenues, and Appropriations.*

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